

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 202005870	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 7:45 PM	Location of Incident: East 136th Street and Brook Avenue, and Queens Central Booking	Precinct: 40	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 08/26/2020 12:27 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 08/26/2020 12:27 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Debora Matias	08448	960901	SRG 1
2. POM Jason Ciota	01410	951615	SRG 3
3. POM Dennis Ustelimov	13541	957238	SRG 3

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: At East 136th Street and Brook Avenue in the Bronx, an officer struck § 87(2)(b) with a baton.	
B. Officers	Force: At East 136th Street and Brook Avenue in the Bronx, officers used physical force against § 87(2)(b)	
C. An officer	Force: At East 136th Street and Brook Avenue in the Bronx, officers used a chokehold against § 87(2)(b)	
D. An officer	Force: At East 136th Street and Brook Avenue in the Bronx, an officer restricted § 87(2)(b)'s breathing.	
E. Officers	Discourtesy: At East 136th Street and Brook Avenue in the Bronx, officers acted discourteously toward an individual.	
F. Officers	Discourtesy: At Queens Central Booking, an officer acted discourteously toward individuals.	

## Case Summary

On August 26, 2020, § 87(2)(b) filed this complaint with the CCRB via its website (Board Review 01).

On June 4, 2020, at approximately 8:00 p.m., § 87(2)(b) was in a large crowd of protesters that was kettled by officers on East 136<sup>th</sup> Street at Brook Avenue in the Mott Haven neighborhood in the Bronx. § 87(2)(b) fell to the ground and other protesters piled on top of her. An unidentified officer allegedly struck § 87(2)(b) on her head with a baton while she was still on the ground (**Allegation A – Force: Nightstick as Club, § 87(2)(g)**). § 87(2)(b) stood up and tried to help other protesters up, and an unidentified officer allegedly pushed her in her back, causing her to fall to the ground (**Allegation B – Force: Physical Force, § 87(2)(g)**). Another unidentified officer allegedly placed his knee on § 87(2)(b)'s back (**Allegations C and D – Force: Chokehold, Restricted Breathing; § 87(2)(g)**). § 87(2)(b) wiggled to find comfort and catch her breath, and the same officer allegedly moved his knee to her neck, where he held it for approximately one minute (**within Allegations C and D**). Police Officer Debora Matias of SRG 1 applied flex cuffs to § 87(2)(b)'s wrists, lifted her off the ground, and took her to a prisoner wagon. While inside the wagon, § 87(2)(b) saw an officer allegedly hold a baton to an unidentified protester's head, while another officer photographed them (**Allegation E – Discourtesy: Action, § 87(2)(g)**).

Police Officer Dennis Ustelimov and Police Officer Jason Ciota of SRG 3 transported § 87(2)(b) and 11 other arrestees to Queens Central Booking. While they were in the van awaiting entry into Queens Central Booking, an unidentified protester complained of having difficulty breathing, and an argument ensued between another protester, Police Officer Ustelimov, and Police Officer Ciota. An officer then closed the van's door and turned off the air conditioning with the arrestees still inside (**Allegation F – Discourtesy: Action, § 87(2)(g)**). § 87(2)(b) was released with a summons for violating the mayor's 8:00 p.m. curfew (Board Review 02).

Body-worn camera (BWC) footage was obtained from the BWCs of Police Officer Matias, Police Officer Ustelimov, Police Officer Ciota, Police Officer Cesear Murray, and Lieutenant Christopher Catalano (IA#105, Board Review 04). These videos are summarized in IA#116 (Board Review 05).

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case 202006855.

## Findings and Recommendations

**Allegation (A) Force: At East 136th Street and Brook Avenue in the Bronx, an officer struck § 87(2)(b) with a baton.**

**Allegation (B) Force: At East 136th Street and Brook Avenue in the Bronx, officers used physical force against § 87(2)(b)**

**Allegation (C) Force: At East 136th Street and Brook Avenue in the Bronx, officers used a chokehold against § 87(2)(b)**

**Allegation (D) Force: At East 136th Street and Brook Avenue in the Bronx, an officer restricted § 87(2)(b)'s breathing.**

## **Known facts and general descriptions**

§ 87(2)(b) was interviewed by telephone on September 9, 2020 (Board Review 06) and provided a follow-up telephone statement on October 29, 2020 (Board Review 07). Another protester and

potential witness, § 87(2)(b) missed her interview appointment on November 12, 2020, and failed to respond to subsequent contact attempts. A third protester and potential witness, § 87(2)(b) stated that her attorney advised her against providing a statement to the CCRB for this case. Police Officer Matias was interviewed on December 18, 2020 (Board Review 09), Police Officer Ustelimov was interviewed on May 3, 2021 (Board Review 10), and Police Officer Ciota was interviewed on May 19, 2021 (Board Review 11).

§ 87(2)(b) stated that after she and the other protesters were kettled and fell to the ground, an officer struck her on her head with a baton while she was still on the ground. § 87(2)(b) stood up and tried to help other protesters up, and an officer allegedly pushed her in her back, causing her to fall to the ground. Another officer placed his knee on § 87(2)(b)'s back. § 87(2)(b) wiggled to find comfort and catch her breath, and the same officer moved his knee to her neck, where he held it for approximately one minute. § 87(2)(b) was unable to describe the appearances of any of these officers. Police Officer Matias then applied the flex cuffs to § 87(2)(b)'s wrists and brought her to a prisoner van.

### **BWC**

Body-worn camera (BWC) footage was obtained from the BWCs of Police Officer Matias (SRG 1), Police Officer Ustelimov (SRG 3), Police Officer Ciota (SRG 3), Police Officer Cesear Murray (SRG 1), and Lieutenant Christopher Catalano (109 PCT) (Board Review 04). § 87(2)(b) is first seen in Police Officer Matias' BWC footage (Board Review 04) when she falls to the ground at runtime 01:14 (08:16:11 p.m.), but what causes her to fall is not seen. The view of § 87(2)(b) while is still on the ground is then obstructed by several unidentified officers' bodies. At runtime 01:33, Police Officer Matias appears to take custody of § 87(2)(b) from an unidentified male officer in a white uniform, and she applies the flex cuffs to § 87(2)(b)'s wrists. At runtime 02:31 (08:17:27 p.m.), Police Officer Matias lifts § 87(2)(b) off the ground and brings her to a line to wait to board a prisoner van. None of the alleged force is seen being used against § 87(2)(b) in this video.

Police Officer Matias' BWC footage is the only BWC video provided for this case in which § 87(2)(b) is visible in the moments before she is apprehended by Police Officer Matias. Police Officer Ustelimov's, Police Officer Ciota's, Police Officer Murray's, and Lieutenant Catalano's BWC footage all begin after Police Officer Matias apprehended § 87(2)(b) at 8:17:27 p.m.

Over 60 additional BWC videos (Board Review 15) from other officers at the scene who began recording before 8:17:27 p.m. (the moment when Police Officer Matias apprehended § 87(2)(b) which were received for other complaints from this protest, were reviewed, and no force is seen being used against § 87(2)(b) in any of these videos.

Numerous cell phone, internet, TARU, and surveillance videos were obtained of this incident as part of this case and the investigations into the other related CCRB cases that were part of this protest (Board Review 15). These videos were reviewed, and § 87(2)(b) was also not seen in any of them.

### **NYPD Documents Reviewed**

A request for any Threat, Resistance, and Injury Report prepared for § 87(2)(b) was returned with negative results (Board Review 08). There are no known NYPD documents that identify the officer(s) who allegedly used force against § 87(2)(b).

### Concurrent Investigations

While there are several other investigations, both within the CCRB and in other City and State investigative bodies, that are investigating the overall incident or other specific portions of it, there are no known concurrent investigations specifically involving § 87(2)(b) regarding this incident.

### Ranking Officers

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case 202006855.

### Officers Interviewed

Police Officer Matias was interviewed on December 18, 2020 (Board Review 09), and her statement is consistent with the events captured in her BWC footage. She denied using and seeing any of the force allegedly used against § 87(2)(b) and she was unable to identify the male officer in the white uniform who she assists with apprehending § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Police Officer Ustelimov was interviewed on May 3, 2021 (Board Review 10), and Police Officer Ciota was interviewed on May 19, 2021 (Board Review 11). Police Officer Ustelimov and Police Officer Ciota stated that they remained in the vicinity of their prisoner van and did not see what happened at the protest before the arrestees were brought to their vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegation Recitation and Disposition

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegation (E) Discourtesy: At East 136th Street and Brook Avenue in the Bronx, officers acted discourteously toward § 87(2)(b)

§ 87(2)(b) stated that while she was in the prisoner wagon, one woman who was one to two seats away from stated that one officer asked another officer to take a photo of him holding up a baton to her head, as though he was hitting her. The officer then took this photo. § 87(2)(b) saw this moment unfold by the van's doors, but she was not sure what was happening at the time, and the woman clarified this moment to her in the van. § 87(2)(b) was unable to describe these officers or this woman, but she noted that the officers appeared white or Hispanic with light skin.

Police Officer Ustelimov's and Police Officer Ciota's BWC footage (Board Review 04) captures them taking photographs of each of the arrestees with their arresting officers before loading all 12 of them onto the prisoner wagon. At no point is any officer seen holding a baton to an arrestee's head while their photograph is being taken.

Police Officer Ciota stated that no officer held a baton to an arrestee's head while they were photographed.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Discourtesy: At Queens Central Booking, an officer acted discourteously toward individuals.**

§ 87(2)(b) stated that while she and the other arrestees were in the van parked outside of Queens Central Booking, one of the arrestees screamed for the officers to open the door because she had trouble breathing. An officer opened the door, and another arrestee told Police Officer Ustelimov and Police Officer Ciota that what they were doing was wrong and unnecessary and that there are better professions than policing. There was a “back and forth” during which the officer got visibly upset, and either Police Officer Ustelimov or Police Officer Ciota slammed the door shut and turned off the air conditioning in the van. Eventually, someone pleaded for the officers to turn on the air conditioning or open the door because there were many prisoners in the van, and they could not breathe well. The officers ignored the arrestees for a few minutes and then turned the air conditioning on “just a little bit.” § 87(2)(b) described Police Officer Ustelimov and Police Officer Ciota as uniformed white males, but she was unable to distinguish their appearances from each other. § 87(2)(b) did not recall whether the officer who turned off the air conditioning was the driver or the passenger.

Police Officer Ustelimov and Police Officer Ciota stated that they transported the prisoners to Queens Central Booking in their van. They both denied turning off the van’s air conditioning following a dispute with the arrestees, and neither had knowledge of any other officer doing so. Both of their BWC recordings ended before they departed the Bronx, and they did not capture any of the events in Queens.

§ 87(2)(g)

**Allegations Not Pleaded**

§ 87(2)(b) described an encounter in the prisoner wagon in which § 87(2)(b) was “misgendered” and seated with the males when she was in fact a female.

At runtime 11:38 in Police Officer Ciota’s BWC footage (Board Review 04), § 87(2)(b) tells Police Officer Ciota her name before she is placed inside the prisoner wagon. Police Officer Ciota remains outside the van collecting the prisoners’ and arresting officers’ information, while Police Officer Ustelimov loads the prisoners into the van.

At runtime 18:23 in Police Officer Ustelimov’s BWC footage (Board Review 04), § 87(2)(b) who is seated in the van next to one male, says, “Am I on this side because you think I’m a guy?” Police Officer Ustelimov says, “No, no, I’m just trying to fit everybody so everybody sits comfortably.” § 87(2)(b) says, “I hope not.” Police Officer Ustelimov says, “Do you want to sit on that side?” § 87(2)(b) says, “I don’t care, I’m just telling you.” At 22:54 of Police Officer Ustelimov’s BWC footage, § 87(2)(b) says her identification lists her as female. At runtime 29:39, the final prisoner is loaded into the van, which appears to contain 11 females and 1 male.

The moments when § 87(2)(b) affirms her gender to Police Officer Ustelimov are not captured by the BWC of Police Officer Ciota, who remains outside the van during that period. At runtime

31:30 of Police Officer Ciota's, Police Officer Ciota approaches Police Officer Ustelimov and asks, "Dennis, Dennis, I'm live. How many males and how many females do we have?" Police Officer Ustelimov says, "We have one male, right?" An unknown male voice then counts two males in the van, and the prisoners in the van collectively say, "No." Police Officer Ciota then reads the count to an unidentified officer as 2 males and 10 females.

Police Officer Ustelimov and Police Officer Ciota were both shown these videos during their interviews. Police Officer Ustelimov denied counting a second male in the van. Police Officer Ciota stated that he counted the genders of the prisoners at the request of an unknown supervisor. Police Officer Ciota could not tell whether the voice that counted a second male was his, and he stated that he did not intentionally misgender anyone and did the best he could to provide an accurate count to a supervisor. He did not ask the arrestees for their genders, but he noted that their genders would be verified when their arrests were processed at Queens Central Booking. Police Officer Ciota did not recall hearing § 87(2)(b) affirm her gender to Police Officer Ustelimov.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to one other CCRB complaint and has been named as a victim in two other allegations (Board Review 12):

- § 87(2)(b)

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming physical and emotional injuries, and violations of her constitutional, common law, and statutory rights. § 87(2)(b) is seeking redress in an amount to be determined by a jury (Board Review 13). On June 16, 2021, an e-mail was sent to the New York City Office of the Comptroller requesting the dates of any scheduled 50H hearing regarding § 87(2)(b)'s Notice of Claim. The response will be added to the case file upon receipt.
- § 87(2)(b)'s summons resulting from this incident, along with all other summonses issued during this incident, was dismissed on § 87(2)(b) by the Bronx District Attorney's Office (Board Review 03).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 14).

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Squad: 02

Investigator: Jean-Paul Lozada SI Jean-Paul Lozada 06/16/2021  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 6/17/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date